

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
H.C.A. No.136 of 2022

Date	Order with signature of Judge
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1. For orders on CMA No.1040/2022
2. For orders on office objection.
3. For orders on CMA No.1041/2022
4. For hearing of main case.
5. For orders on CMA No.1042/2022

13-04-2022

Mr.Faisal Mahmood Ghani, Advocate for the Appellant.
Mr.Muhammad Ali Lakhani, Advocate for Respondent.

1. Urgency granted.
- 2 to 5. Instant appeal has been filed to challenge the impugned order dated 31.03.2022 passed by learned Single Judge in Suit No.424/2022, which read as follows:-

“31.03.2022 :

M/S Muhammad Ali Lakhani & Mujtaba Suhail Raja
Advocates for the plaintiff.
Mr. Faisal Mehmood Ghani, Advocate for defendant No.1.
Mr. Awais Farooqi, Advocate for defendant No.2.

1&2. Mr. Awais Farooqi, Advocate files power on behalf of defendant No.2, which is taken on record. After receiving copies of the plaint, annexures filed therewith and listed applications, he requests for time to seek instructions.

Learned counsel for the plaintiff requests for time to file rejoinder as copy of the counter affidavit filed by defendant No.1 was received by him yesterday. Let the needful be done before the next date of hearing with advance copy to the other side. To be listed on 10.05.2022. Interim order passed earlier to continue till the next date of hearing. “

When confronted as to maintainability of instant appeal, as prima facie it appears that the order dated 31.03.2022, which has been assailed through instant appeal, the matter has been simply adjourned to 10.05.2022 at the request of learned counsel, whereas, the interim order already passed in the instant case has been extended till next date of hearing, and no final adverse order has been passed on the said date of hearing.

In response to such query, learned counsel for the appellant submits that stay in the instant case has been granted in violation of law by the learned Single Judge, whereas the entire process of recruitment has been restrained, which will affect the smooth functioning and management of the affairs of the appellant company. Per learned counsel, instead of appreciating the propriety and legality of the claim of respondents and modifying/recalling the ad-interim order, the matter has been adjourned to 10.05.2022, while the entire process of recruitment has been stayed.

Learned counsel for the respondent, who is present in court on notice under Order 43 Rule 3 CPC submits that instant appeal is misconceived and not maintainable, as no final adverse order is passed on 31.03.2022 by the learned Single Judge, which could be assailed by filing High Court Appeal. Per learned counsel, injunction application is still pending and the appellant can raise all such objections before the learned Single Judge, and can also move an application for antedating the matter before learned Single Judge if so advised. It has been further contended by the learned counsel that the interim order is otherwise in consonance to stay, which was already granted by the Division Bench of this Court's order passed in H.C.A.No.321/2021 relating to recruitment on the same posts.

Be that as it may, since through impugned order passed by the learned Single Judge on 31.03.2022 no final adverse decision on the injunction application has been given, whereas, interim order already passed in the instant case, which has not been assailed, has been extended and the matter has been adjourned to 10.05.2022, therefore, the said order is not appealable and in any

case. The High Court Appeal is premature, hence, not maintainable.

The request of the learned counsel for the appellant from this court in the instant High Court Appeal to antedate the hearing before the learned Single Judge is misconceived as it is the prerogative of the learned Single Judge to regulate his Court's proceedings and to fix a date of hearing as per convenience of the Court. However, the appellant will be at liberty to approach the learned Single Judge by filing appropriate application for antedating the case, and also to agitate such grounds and objections for seeking recalling and/or modification of ad-interim order operating in the suit, which may be considered by the learned Single Judge and appropriate order may be passed after hearing the parties in accordance with law.

Instant High Court appeal is disposed of in the above terms along with listed application.

Judge

Judge